CF0000061691

(2)

Division Bench (Criminal)

BEFORE THE HIGH COURT OF JUDICATURE AT JABALPUR

Cr.A.No.1769 of 1997

Appellant: (In Jail) Tiharo Bai w/o late Navalsai aged 53 years, R/o Village Dawna, P.S. Ramanujganj, Distt-Sarguja (M.P.)

Vs-

Respondent: State of M.P. through- P.S.Ramanujganj ,Distt-Sarguja (MP)

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE

11621

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(35)

आदेश पत्रक

मामला क्रमांक Cr.A. No. 1769/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

3-2-2006

Smt. Savita Tiwari, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

By this appeal under Section 374 (2) of the Cr.P.C. the accused/ appellant has questioned the legality of the judgment of conviction and order of sentence dated 29-7-97 passed by learned Additional Sessions Judge, Surajpur, in S.T. No.231/96 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing murder of Guddi, sentenced her to undergo imprisonment for life.

The case of the prosecution, in brief, is that Karmato Bai was married to Dharmapal and there was two and half months old girl child from the wedlock namely Guddi. Dharmapal also kept other lady namely Sahodara as wife and she used to reside with Dharmapal at his working place namely Chirmiri whereas Karmato Bai was residing at the native place of Dharmapal namely village Dauna. As there was marriage in the house of Sahodara, therefore, on 19-2-96 Sahodara invited Karmato to her residence for the purpose of stitching the leaves to be used for serving meal. Karmato went to the house of Sahodara leaving behind Guddi at her residence. Just after Karmato reached to the house of Sahodara, Sahodara immediately sent her

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

brother Suraj to the house of Karmato in order to find out whether Guddi is all right at the residence or not. Accused/appellant namely, Tiharo Bai, mother-in-law of Karmato and grandmother of Guddi was at the residence. Suraj immediately returned and informed that somebody has murdered Guddi, on which the villagers collected at the residence of Dharmapal and they saw that Guddi was lying dead in a pool of blood in the Pooja room. Immediately merg intimation Ex.-P/3 was given by Sukhram, Sarpanch of village Dauna in the police station Ramanujnagar. Based on the merg intimation F.I.R. Ex.-P/2 was registered. Investigating Officer Khuleshwar Sai Paikara (PW-6) left for the scene of occurrence and prepared Panchanama Ex.-P/1 of the body of Guddi. The dead body of Guddi was sent for postmortem examination to the Government Hospital, Ramanujnagar under Ex.-P/10-A where Dr. D.K. Vishwakarma (PW-5) conducted postmortem and prepared postmortem report Ex.-P/10. The site plan Ex.-P/13 was prepared. While in the police custody, accused Tiharo Bai gave a memorandum Ex.-P/8 regarding the place where she had kept carpenter's axe and in pursuance of that carpenter's axe was got recovered at the instance of accused Tiharo under Ex.-P/7. One blouse of Tiharo Bai and Sari were taken into possession under Ex.-P/6. The blood stained soil and plain soil were taken into possession from the place of occurrence under Ex.-P/5. One broom and one lamp were taken into possession under Ex.-P/4. Vasula and blood stained articles were sent for chemical examination to the Forensic Science Laboratory, Sagar from where report Ex.-P/16 was received.

After completion of the investigation, charge sheet was filed against accused Tiharo Bai in the Court of Judicial Magistrate, 1st Class, Surajpur who in turn committed the case to the Sessions Judge, Surajpur from where learned Additional Sessions Judge received the case on transfer for trial.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to establish the charge against the accused examined 6 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which she denied the prosecution evidence and stated that she is innocent and has been falsely implicated in the crime.

We have heard learned counsel for the parties.

The homicidal death of Guddi is not in dispute.

As far as involvement of the accused/appellant in committing murder of Guddi is concerned, there is no eyewitness to the incident. The whole case rests on the circumstantial evidence and as per the settled law in order to convict an accused based on the circumstantial evidence, the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220** held that:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater

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should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

Now, we shall proceed to examine the evidence available on record and to find out as to whether the prosecution has been able to establish the crime in question against the accused/appellant based on the circumstantial evidence. The prosecution has tried to establish the case on the basis of following circumstances:-

(i) Accused Tiharo Bai was all alone at the residence where deceased Guddi was sleeping,

(ii) Even when Sukhram and others came to the residence where Guddi was lying dead only accused Tiharo Bai was at the residence,

(iii) When enquires were made from the accused about the cause of death of deceased Guddi, she did not reply.

(iv) Pooja place where the body of deceased Guddi was found only the accused used to perform Pooja in that room, and

(v) Blood stained carpenter's axe and the accused's blood stained blouse and Sari were recovered by the I.O.

As far as first circumstance is concerned, it is admitted position that on the fateful day on the invitation of Sahodara Bai, mother of the deceased Karmato Bai went to the house of Sahodara bai leaving behind Guddi in a sleeping condition in the house, at that time, accused Tiharo Bai was at the residence. But it has come in the evidence of PW-2 Ramsharan that younger

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

daughter-in-law and one son of eldest daughter-in-law were at the residence apart from accused Tiharo Bai. PW-3 Karmato, mother of the deceased, in para-10 of her evidence has stated that Suraj, brother of Sahodara, came to the residence on asking by Sahodara to find out from the residence as to whether Guddi is all right at the residence. She has also stated that in the house where Guddi was sleeping there are 2-3 rooms, Varandah and there are two doors in front of the house and in the back of the house. She has also stated that initially they suspected that Suraj might have committed the offence and even father of Suraj tried to give bribe to the police by offering Rs.14,000/-. As Sahodara was issueless, therefore, she in connivance with Suraj might have finished her daughter. In para-5 of her evidence she has stated that Sahodara forcibly took her to her residence for the purpose of stitching the leaves. In para-6 she has stated that in the same premises her brother-in-law Rampal was also residing. PW-4 Sukhram in para-11 of his evidence has stated that when he reached to the house of Tiharo Bai after coming to know about the incident, he saw that number of persons and family members of Tiharo Bai were present in the house. PW-4 in para-22 of his evidence has stated that just after the incident crackers were burst in the house of Sahodara, therefore, a suspicion was raised about the involvement of family members of Sahodara in crime in question. Therefore, in view of the above, the prosecution has utterly failed to prove that the house in question where Guddi was sleeping was in exclusive possession of Tiharo Bai, she was the only person who was present in the house and it was not accessible to anyone else. It has come on record that even Suraj, brother of Sahodara, came to the residence of Karmato to see the condition of the child and he has not been examined by the prosecution to prove that when he came, Tiharo Bai was the only person who was present in the house. Therefore, merely leaving Tiharo Bai at the residence by Karmato Bai, when she left the

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residence, this circumstance itself is not conclusive in order to connect the accused with the crime in question.

As far as 2nd circumstance is concerned, it has come in the evidence of PW-4 Sukhram Gond, Sarpanch, that when he reached after hearing about the incident, apart from Tiharo Bai, her family members and others were present in the house. Even as per the prosecution evidence, Suraj also came on asking by Sahodara to the house. PW-2 Ramsharan has also stated that apart from the accused, her younger daughter-in-law and son of the eldest daughter-in-law were present in the house. Therefore, the prosecution, through this circumstance, has not been able to establish that the accused was the only person at the residence.

As far as 3rd circumstance is concerned, merely by not replying the question, only on the basis of this single circumstance, ~~unless~~ without some other material on record, it is difficult to draw any inference that the accused was the author of the crime in question.

As far as 4th circumstance is concerned, it has come on record that where the dead body of Guddi was found only the accused used to perform Pooja, but that does not mean that the said place was accessible only to the accused to commit crime. Moreover, it is established that even Sahodara was residing with Dharmapal for more than 6 years and she was not able to conceive, therefore, there was frustration in the family that Sahodara has not begotten the child. Sahodara gave invitation to Karmato to come to her house, when she came to the house of Sahodara, she immediately sent Suraj, her brother, to find out the condition of the child. He immediately returned and informed that child was murdered. Therefore, even if the accused used to perform Pooja in the room where the body of the child was

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found does not lead to the conclusive inference that only accused Tiharo Bai was the only person who was able to commit crime in question in the Pooja room.

As far as 5th circumstance is concerned, there is wavering evidence regarding the recovery of the carpenter's axe at the instance of the accused because PW-4 Sukhram in para-6 has stated that after reaching to the scene of occurrence, police recovered Vasula from the place of occurrence apart from clothes, bangles and other articles under Ex.-P/4. In para-14 also he has stated that Vasula was at the place of occurrence. In other places, he has stated that Vasula was recovered at the instance of the accused. Apart from that, as per the serologist's report human blood was found on the blouse and frock, but there is no evidence that what was the blood group of the blood which was found on the frock and blouse. Whether the blood group of the blood found on the blouse was same of the deceased blood group? as per the report as the blood was disintegrated, therefore, it could not be ascertained that blood which was found on Vasula was human blood, therefore, on this circumstance the accused cannot be connected with the murder of Guddi.

For the foregoing discussion, we are of the considered opinion that the prosecution has utterly failed to connect the accused with the crime in question based on the circumstantial evidence adduced by the prosecution. The prosecution evidence has not stood up to the test laid down by the Hon'ble Apex Court connecting the accused with the crime based on the circumstantial evidence, therefore, finding of the trial Court convicting the accused with the murder of Guddi cannot be sustained.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the result, the appeal succeeds and same is allowed. The conviction and sentence imposed on the accused/appellant under Section 302 of the I.P.C. are set aside. The accused is acquitted of the charge under Section 302 of the I.P.C. Accordingly, the accused be set at liberty forthwith unless required to be detained in any other case.	
Barve	Sd/- L.C. Bhadoo Judge	Sd/- DHIRENDRA MISHRA Judge